

PREQUALIFICATION COMMITTEE
MINUTES – JULY 13, 2012
1:00 P.M. EDT

The following Committee members attended the meeting:

Tiffany Mulligan	Director of Economic Opportunity and Prequalification; Chair and Non-Voting Member
Karen Macdonald	Prequalification Engineer; Committee Secretary and Non-Voting Member
Greg Kicinski	Director of Project Management; Voting Member
Joe Novak	Crawfordsville District Construction Director; Voting Member
Mark Ratliff	Director of Economics, External Audit, and Performance Metrics; Voting Member
Jim Stark	Deputy Commissioner of Capital Program Management; Voting Member
Troy Woodruff	Deputy Commissioner of Operations; Voting Member
Greg Pankow	State Construction Engineer, Construction Management Division; attending for Mark Miller as voting member
Peter Yao	Project Manager I-69 and Tech Support Road Design Engineer, Office of Roadway Services; attending for John Wright as voting member

Also in attendance:

Louis Feagans	Director of District Project Management; INDOT
Heather Kennedy	Attorney, Economic Opportunity and Prequalification Divisions; INDOT
John Leming	Consultant Prequalification Research Analyst; INDOT
Maurice Moubray	Contractor Prequalification Auditor; INDOT
Bob Hazzard	Buying Manager, Office of Real Estate; INDOT
Kathy Heistand	Manager of Administration Finance, Office of Real Estate; INDOT

Mike Jett	Project Manager, Major Program Management; INDOT
Sam Sarvis	Deputy Commissioner of Major Program Management; INDOT
George Dremonas	Director of Legal Services; INDOT
Gabe Paul	Attorney, Legal Services; INDOT
Denise McHenry	Indiana Acquisition of Indiana, LLC
Steve Christian	Stephen J. Christian and Associates and American Council of Consulting Engineers (ACEC) representative
Greg Rominger	Burgess & Niple, Inc. and ACEC representative

The Committee reviewed the following agenda items:

1. Adoption of May 25, 2012 meeting minutes
2. INDIANA ACQUISITION OF INDIANA, LLC – Appeal of twelve month suspension

PREQUALIFICATION COMMITTEE MEETING
OPEN SESSION
JULY 13, 2012

Ms. Mulligan, Committee Chair, called the meeting to order at 1:02 p.m. EDT. She facilitated introductions of all individuals present. All Committee members were present, with the exception of Mr. Miller, Mr. Wright, and Mr. Kicinski. Mr. Greg Pankow attended for Mr. Miller. Mr. Peter Yao attended for Mr. Wright. Mr. Stark was not in attendance at the start of the meeting. Mr. Louis Feagans sat in for Mr. Stark until he arrived.

1. Adoption of May 25, 2012 Meeting Minutes

Ms. Mulligan called for consideration of the meeting minutes from the May 25, 2012 meeting.

Mr. Feagans moved to adopt the meeting minutes from the May 25, 2012 meeting. Mr. Yao seconded the motion. All members voted in favor. Ms. Mulligan stated the minutes would be posted on the website.

2. INDIANA ACQUISITION OF INDIANA, LLC – Appeal of twelve month suspension

Ms. Mulligan stated that this meeting is to hear the appeal brought by Ms. Denise McHenry. Ms. McHenry is appealing the twelve month suspension of Indiana Acquisition of Indiana, LLC's (Indiana Acquisition) prequalification certificate as recommended by the Committee at the May 25, 2012 meeting and directed by Commissioner Cline's June 4, 2012 letter.

Ms. Mulligan explained that because this is an appeal, Ms. McHenry will present her information first, then a representative from INDOT will respond, and then Committee members and the audience may ask questions.

Ms. McHenry stated that she is disappointed that Mr. Scott Adams, INDOT's Director of Real Estate, is not here today. She stated that Mr. Adams recommended the twelve month suspension and alleged that Indiana Acquisition's performance on the I-69 project resulted in a 55% error rate.

Ms. McHenry brought a Bible and said that she will tell the whole truth and nothing but the truth.

Ms. McHenry stated that she has worked for INDOT through five administrations with no past complaints.

Ms Mulligan stated for the record that Mr. Troy Woodruff and Mr. Sam Sarvis arrived.

Ms. McHenry stated that she has five or six handouts to pass out. She stated that she tried to get the problem of the "S" at the end of the owner's name resolved with the Deputy Attorney General (DAG) back in January. She stated that she called Mr. Adams on October 2, 2011 to ask why INDOT was telling consultants not to assign work to Indiana Acquisition. She stated that Mr. Adams' response was to wait and "lay low." She stated that she also suggested that they meet to discuss the problem. The first handout included two emails to Mr. Adams and notes of phone conversations. She stated that Mr. Ken Fleetwood of Beam, Longest, and Neff was told not to use Indiana Acquisition. She asked if the Committee members had seen the letter she submitted from the property owners.

Ms. Macdonald stated that the letter was included in the members' packets.

Ms. McHenry stated that she tried to get the issues resolved in November 2011 and January 2012. She stated she was told it would go away.

Ms. McHenry's second handout was a recommendation for administrative settlement of a parcel on I-69. She stated that INDOT signs off on administrative settlements. Ms. McHenry asked Mr. Sarvis to verify that it was his and Mr. Adams' signatures on the administrative settlement.

Mr. Sarvis replied that it is his signature on the document.

Ms. McHenry stated that Mr. Sarvis' and Mr. Adams' approval of the settlement shows that she was following the process on the first section of I-69.

Mr. George Dremonas, INDOT's Director of Legal Services, asked Ms. McHenry what this was supposed to prove.

Ms. McHenry replied that she brought it forth because Mr. Adams stated in the May 25, 2012 Committee meeting that five of nine parcels were not handled correctly.

Ms. McHenry stated that her daughter, Ms. Angela Whicker, performed some of the work on I-69. Ms. McHenry stated that she did not enjoy working on I-69. She stated that she had gone back to property owners to correct the incentive amount.

Mr. Woodruff asked if he could ask a question.

Ms. Mulligan stated that it is up to Ms. McHenry. In accordance with the meeting procedures, Ms. McHenry has the floor.

Ms. McHenry stated that it is OK for Mr. Woodruff to ask his question.

Mr. Woodruff stated that the reason Indiana Acquisition was suspended was because of a falsified document and asked what the information Ms. McHenry is presenting has to do with that issue.

Ms. McHenry stated that she will address that issue. She stated that the letter from Commissioner Cline also mentioned her performance on I-69.

Ms. McHenry stated that she wanted to address the issue of INDOT asking buyers to change documents. She stated that Mr. Greg Garrison from Burgess & Niple, Inc. (B&N) stated at the May 25, 2012 meeting that he and three other buyers he talked to had been asked by INDOT to change documents. She passed out her third handout, which was an email from Ms. Sandra Vandine, Program Director - Buyer from INDOT's Office of Real Estate. In the email Ms. Vandine asked Ms. McHenry to correct a misspelled name on a Warranty Deed and Ms. Vandine stated that it is an easy fix. Ms. McHenry stated that this email shows that it is OK to correct documents.

Mr. Woodruff asked if the instances that Ms. McHenry is presenting are the same as what she did with the mortgage release.

Ms. McHenry replied that it was the same.

Mr. Ratliff stated that Ms. McHenry took copies of two documents and put them together. She took a copy of a signed mortgage release from one parcel and changed the top to make it apply to the other parcel.

Ms. McHenry stated that there were two parcels that were owned by the same company. That company held its own mortgage. She stated that it was determined at the last meeting that requiring a mortgage release in this case was a moot point.

Ms. McHenry stated that it is important to get things in writing. Her fourth handout was an email from Mr. Fleetwood indicating that he was told not to use her. She stated that this proves that she was blackballed.

Ms. McHenry stated she could come up with more examples from her emails. She stated that she has not had a job since January 2012.

Ms. McHenry stated that Mr. Woodruff asked at the May 25, 2012 meeting if INDOT wants someone like her representing the State of Indiana. She stated that he inferred that she was unprofessional. She passed out her next handout, which included a business card, pamphlet and stationary for Indiana Acquisition. She stated that this should show that her company is professional.

Ms. McHenry stated that there was a representative from the Attorney General's (AG) office at the May 25, 2012 meeting. She stated that the minutes show that legal representative stated that no fraud occurred. She stated that he said there was no malice.

Mr. Gabe Paul stated Ms. McHenry was referring to his comment and noted he is an Attorney from INDOT Legal Services, not the AG's office.

Mr. Novak stated that he did not recollect that the Committee or other INDOT representatives determined that it was fraud, but the Committee believed that the document was falsified.

Mr. Novak asked Ms. McHenry about Ms. Whicker. Ms. McHenry had mentioned her earlier in the meeting.

Ms. McHenry stated that Ms. Whicker started working for her in 2001. She stated that Ms. Whicker is a registered buyer. She stated that INDOT asked that Ms. Whicker work on I-69. Since then Ms. Whicker has left Indiana Acquisition and started her own company. Ms. Whicker is still working as a buyer on I-69.

Ms. McHenry stated that she got Indiana Acquisition certified as a Disadvantaged Business Enterprise (DBE) and Women's Business Enterprise (WBE) because prime consultants wanted to hire her as a subcontractor and get DBE credit. Ms. McHenry stated it would be difficult for Consultants to meet their DBE goals without Indiana Acquisition's prequalification.

Ms. Mulligan stated that as Director of Economic Opportunity Division (EOD), her Division sets DBE goals on contracts based on the project work types and the availability of DBEs certified in those work types. EOD would not set a DBE goal on a contract if there are no opportunities for DBEs.

Mr. George Dremonas, INDOT's Director of Legal Services, stated that he objects to the use of the term blackball. It is pejorative. He stated that INDOT made legitimate business decisions based on mistakes Ms. McHenry made. They were not ordinary mistakes, but instead numerous mistakes and one serious mistake. The alteration of the document relates directly to trust and confidence.

Mr. Dremonas stated that he did not attend the May 25, 2012 meeting, but he reviewed the proposed minutes from the meeting, spoke with people who attended the meeting, and listened to Ms. McHenry's presentation this afternoon. He stated that he has not heard Ms. McHenry offer an apology to INDOT, but instead Ms. McHenry has only provided excuses. She has shown anger and disdain towards INDOT management.

Mr. Dremonas stated that INDOT has the right to assign the work. He stated that he will stipulate to the fact that INDOT asked that only Ms. Whicker work on I-69, Section 4. INDOT asked that Ms. McHenry not work on any future parcels on I-69. So what!

Mr. Dremonas stated that the documents Ms. McHenry distributed at the meeting today have no relevance with respect to whether she made the numerous mistakes on I-69 and the one serious mistake on SR 8. He stated that even if submitted work was signed off by people at INDOT, it does not release the buyer's responsibility. The buyer is still responsible if a mistake is discovered.

Mr. Dremonas stated that scrivener or typographical errors such as correcting a warranty deed are "easy fixes" and can be corrected. The problem with the mortgage release in question was that it was submitted to INDOT as if it were an original. Ms. McHenry could have disclosed the fact that it was not an original, but instead submitted it with the idea that it would go through.

Mr. Stark arrived to the meeting. Ms. Mulligan introduced him as a Committee member.

Mr. Dremonas stated that even though Mr. Adams is not at the meeting today, Ms. McHenry should not let that prevent her from presenting her entire case. We are here today to hear everything.

Mr. Dremonas stated that INDOT recognizes and appreciates Ms. McHenry's past work performed for INDOT; however, these recent events are unacceptable.

Mr. Dremonas reiterated that the problem that brought Ms. McHenry before the Committee was the falsified document and the history of problems on I-69. He stated that the issue was not about fraud but about altering a document and submitting it as an original.

Ms. McHenry apologized for using the term blackballed. She stated she does not know what term to use instead. She asked for suggestions.

Ms. McHenry stated that Indiana Acquisition had active contracts with prime consultants when they were told not to use her. It didn't apply to just future work but current work she had under contract.

Ms. McHenry stated she wanted to address the accusation that she has not offered an apology to INDOT. She stated that she went back to all of the property owners on I-69 and corrected the incentives. She stated that her past experience should speak for the two errors that were made. She stated that the administrative settlement was new with the I-69 project. She stated that thousands of mistakes were made by all the buyers on the project, but they worked through them.

Ms. McHenry stated that she was at a meeting in the Seymour District with twenty people there. Someone stated that if the timeframe were met, they could split the \$500,000.

Ms. McHenry stated that she is sorry if she did not meet INDOT's standards. She stated that she has not received an explanation for why firms were told not to use her and she had asked on several occasions. She stated that she has not received an apology from INDOT for that.

Ms. McHenry stated that she has been a big ally for INDOT over the years. She stated that property owners have told her that she must not be from INDOT because she is kind. She stated that she works with the property owners to avoid having to go to condemnation on a property.

Ms. McHenry addressed Mr. Dremonas' comments about scrivener's errors. She stated that even if a change is made to the first page of a document, you still need to let the property owner know.

Mr. Dremonas stated that everyone makes mistakes. He stated that if a document is altered, of course you need to let the property owner know, but you also have to let INDOT know. We do not want to see a document slid through.

Mr. Dremonas responded to Ms. McHenry's comment about not receiving an apology from INDOT. He asked why INDOT should apologize. INDOT did nothing wrong.

Ms. McHenry addressed Mr. Woodruff and stated that at the May 25, 2012 meeting he asked who she represented. She stated that at that meeting she replied that she represented INDOT. She stated that she should have replied that she represents the taxpayers. She stated that the taxpayers pay her and all of us.

Mr. Feagans left the meeting.

Ms. Mulligan asked if there were any questions from the Committee.

Mr. Pankow asked if we let consultants finish out work under contract if we do not renew their certificate.

Ms. Mulligan replied yes.

Mr. Yao addressed Ms. McHenry and stated that his impression from the May 25, 2012 meeting was about her performance. INDOT's Office of Real Estate was not happy because the documents were rejected by the DAG and were submitted several times. We expected some kind of improvement from you.

Ms. McHenry stated that she will never submit an altered document again. She stated that with all this, now INDOT will not ask a buyer to make a change without getting approval from the property owner.

Mr. Novak stated that he agrees with Mr. Yao. This document went back and forth. He stated that he is concerned with the altered document.

Ms. McHenry asked if Mr. Novak was concerned even with the letter from the property owners.

Mr. Novak stated that there are ways to remove work from a consultant/contractor. He stated that he did not agree with the motion at the last meeting and voted against it. He stated that to some extent he still feels that way.

Ms. Mulligan stated that at the last meeting the motion was to recommend to the Commissioner to suspend Indiana Acquisition's prequalification for twelve months. With this appeal, the Committee must amend or reaffirm the motion and take it back to the Commissioner.

Ms. McHenry stated that she has not had work since January 2012, and it is now July 2012.

Ms. McHenry asked to get a copy of the meeting transcript.

Ms. Mulligan stated that minutes are taken by a staff member, not a court reporter. We do not record the meeting. After the minutes are drafted, Committee members vote to adopt the minutes at the next Committee meeting.

Ms. McHenry stated that the minutes from the May 25, 2012 meeting were pretty close to what was said.

Ms. McHenry stated that prime consultants were told to not use her last fall.

Mr. Dremonas stipulated that in October 2011 INDOT asked that only Ms. Whicker be allowed to work on I-69.

Ms. McHenry stated that the engineering firm did not renew the contract with her for the next phase on I-69, but she was allowed to finish up three parcels.

Mr. Pankow asked if Ms. Whicker still worked for Indiana Acquisition.

Ms. McHenry stated that Ms. Whicker started her own firm so this would not hurt her financially. She stated that they had been in a partnership together.

Ms. McHenry stated that back in October 2012 she wrote a letter to INDOT asking why firms were asked not to use her.

Mr. Novak asked why Indiana Acquisition was not getting work even though they were still prequalified.

Ms. McHenry stated that other firms were told not to use her, but she does not have documentation to prove it. She stated that INDOT used to assign work through on-call contracts, but then INDOT started doing turn-key projects. With a turn-key project, instead of being assigned work by INDOT, the buyer is hired as a subconsultant by the prime consultant.

Ms. McHenry mentioned that she had worked with Mr. Greg Rominger when he was at UCE. She stated that she has not had any problems through five administrations with INDOT. She stated she expects her evaluation ratings would indicate that she would be one of the top three buyers used on INDOT projects.

Mr. Yao asked what is considered an easy fix.

Mr. Hazzard said that an example of an easy fix is a document that goes to the Recorder's office and a mistake is found. INDOT asks the buyer to fix a document. Even if INDOT does not tell the buyer that they have to go back to the property owner, we expect that the buyer will inform the property owner.

Mr. Dremonas stated that it is different with a minor typo or scrivener's error. What Ms. McHenry did was submit a falsified document.

Ms. McHenry stated that the document was not falsified.

Mr. Hazzard stated that it was a photocopied and altered document. He explained that there were two properties, and Ms. McHenry had taken one document from one property with signatures and notary signature and copied it, altered the top of the document, and submitted it as an original.

Ms. Mulligan suggested as an option that the Committee could ask Ms. McHenry to submit a letter explaining that she now knows the procedures. Ms. McHenry could acknowledge that submitting the falsified document was inappropriate and that it will not happen again. Ms. Mulligan stated that the Committee has asked contractors to submit work improvement plans in the past.

Mr. Rattliff stated that it is a serious matter because INDOT needs to be able to defend the mortgage release on the property with a legal document. We cannot accept a forged document.

Ms. McHenry stated that it was not a forgery. She admitted that she used her crimp and placed it over the notary's stamp.

Ms. Mulligan stated that the Committee's options are to make a new recommendation to the Commissioner or recommend that the Commissioner reaffirm the suspension.

Mr. Woodruff stated that we have not heard Ms. McHenry admit that she has done anything wrong. He did not think a written statement or work improvement plan would help in this case.

Ms. McHenry stated that she did not forge the document. She stated that she could have handled it differently. She stated that she tries to make it as easy on the property owner as possible. She had gone back to the property owners about the "S" on the name registered with the Indiana Secretary of State (SOS). It took months to get the SOS to remove the "S" from the owner's name.

Mr. Novak stated that he agrees with Mr. Woodruff.

Mr. Pankow stated that he also agrees with Mr. Woodruff. Ms. McHenry has not admitted that she did anything wrong.

Mr. Ratliff moved to recommend to the Commissioner to reaffirm the twelve month suspension.

Mr. Pankow seconded Mr. Ratliff's motion.

All Committee members voted aye.

Ms. Mulligan stated that the recommendation will go to the Commissioner, and we will send Ms. McHenry the Commissioner's final action.

Ms. Mulligan stated that there are some potential issues with a few contractors. We may have to meet at our regularly scheduled meeting on August 2, 2012.

Mr. Stark moved to adjourn the meeting. Mr. Ratliff seconded the motion. All voted in favor of adjourning the meeting.

Ms. Mulligan adjourned the meeting at 2:27 pm.